

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company for Authority to)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer)	Case No. 11-348-EL-SSO
Pursuant to § 4928.143, Ohio Rev. Code,)	
)	
In the Form of an Electric Security Plan)	
In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-349-EL-AAM
Ohio Power Company for Approval of)	Case No. 11-350-EL-AAM
Certain Accounting Authority)	

**MOTION FOR PROTECTIVE ORDER OF THE CONFIDENTIAL VERSION OF
ORMET PRIMARY ALUMINUM CORPORATION’S
POST-HEARING REPLY BRIEF**

Ormet Primary Aluminum Corporation (“Ormet”), by its attorneys and pursuant to Section 4901-1-24(D) of the Public Utilities Commission of Ohio’s (“Commission”) rules (O.A.C. § 4901-1-24(D)), hereby moves the Commission to enter a protective order keeping confidential certain designated confidential and/or proprietary information contained on pages 2-3, 8-9 and 14 of the unredacted confidential version of Ormet’s Post-Hearing Reply Brief. Consistent with the requirements of Section 4901-1-24(D) of the Commission's rules and the instructions of Hearing Examiner See, an original and three unredacted confidential copies of the Ormet Post-Hearing Reply Brief filed today have been sent via overnight Federal Express to the Commission for filing under seal. The relevant portions of the Reply Brief, for which Ormet seeks the protective order, are redacted in the public version filed today for the reasons supporting this motion detailed in the attached Memorandum in Support.

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Dated: July 9, 2012

**BEFORE
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**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER OF THE CONFIDENTIAL VERSION OF
ORMET PRIMARY ALUMINUM CORPORATION’S
POST-HEARING REPLY BRIEF**



Ormet respectfully requests that portions of its Post-Hearing Reply Brief be designated as confidential and protected from public disclosure. The information for which protection is sought includes information that was introduced during the recently-concluded hearing in the above-captioned matter in closed, confidential session and that was produced to Ormet in discovery subject to a Confidentiality Agreement. Specifically, the brief discusses information that Ohio Power Company (now merged with Columbus Southern Power Company and referred to herein as “AEP Ohio”) produced in response to First Energy Solutions’ (“FES”) Interrogatory 5-05, which has been treated by the Commission as confidential. Ormet introduced this interrogatory response into evidence at the hearing subject to its confidential treatment as CONFIDENTIAL Ormet Exhibit 101. To introduce that document and question Mr. David M. Roush about it, Ormet also moved the hearing into confidential session. *See generally* Hr’g Tr., vol. IV, May 22, 2012 (Confidential). Additionally, Ormet again moved the Commission into confidential session when putting on its own witness Whitfield A. Russell, who offered testimony regarding information that drew upon the AEP Ohio’s response to FES-INT-5-05 and Hr’g Tr.,

vol. XIV (Confidential). *See generally* Hr’g Tr., vol. XIV, June 6, 2012 (Confidential).

The portions of Ormet’s Post-Hearing Brief where confidential information is discussed are listed in the table below and identified in the brief with the designation [BEGIN

CONFIDENTIAL INFORMATION . . . END CONFIDENTIAL INFORMATION]:

Redacted Sentence	Page Number
Indeed, while AEP Ohio has repeatedly asserted that its present application would impose only a modest rate increase upon ratepayers, AEP Ohio’s own projections acknowledge that the current Electric Security Plan (“ESP II”) application could increase Ormet’s electricity rates by 2013 by more than [BEGIN CONFIDENTIAL INFORMATION ██████████ END CONFIDENTIAL INFORMATION] over Ormet’s 2011 rates.	2
Unfortunately, AEP Ohio’s projections understated the harm to Ormet. As was explained in the uncontested testimony of Ormet witness Whitfield A. Russell, Ormet’s rates in 2013 will have increased over its 2011 rates by an astounding [BEGIN CONFIDENTIAL INFORMATION ██████████ END CONFIDENTIAL INFORMATION] if the fuel cost increases projected by AEP Ohio witness Oliver J. Sever prove accurate.	2
The component parts of this rate increase include: (a) annual RSR payments of anywhere from \$7.38-\$20 million per year (<i>see infra</i> p. 10; Ormet Ex. 106B at 14), (b) annual PIRR payments of approximately \$13.25 million starting in mid-2013, (c) a decreasing special arrangement discount that will be \$16 million less than its 2011 discount, and [BEGIN CONFIDENTIAL INFORMATION ██████████ END CONFIDENTIAL SECTION].	3
Putting aside the RSR (or deferred amount), the ESP II application would increase Ormet’s 2013 rates over its 2011 rates by approximately [BEGIN CONFIDENTIAL SECTION ██████████ END CONFIDENTIAL SECTION].	8-9
The component parts of that increase include: (a) annual RSR payments of anywhere from \$7.38-\$20 million per year (<i>see infra</i> p. 10; Ormet Ex. 106B at 14), (b) annual PIRR payments of approximately \$13.25 million starting in mid-2013, (c) a decreasing special arrangement discount that will be \$16 million less than its 2011 discount, and [BEGIN CONFIDENTIAL INFORMATION ██████████ END CONFIDENTIAL SECTION].	9
AEP Ohio’s own projections demonstrate that it is about to get much worse, predicting that the 2013 FAC rates will likely increase by another [BEGIN CONFIDENTIAL SECTION ██████████ END CONFIDENTIAL SECTION].	15
Ormet agrees wholeheartedly with Commissioner Porter’s statement, made in	15

the middle of these hearings after learning of AEP Ohio's projected increases, [BEGIN CONFIDENTIAL PORTION]   END CONFIDENTIAL PORTION. See Hr'g Tr. vol. IV, 1233:24-1236:22 (confidential).	15
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AEP Ohio has asserted that the public release of the information designated as confidential in Ormet's Post-Hearing Reply Brief would harm the Company. Other portions of Ormet's Post-Hearing Reply Brief have been redacted because they reveal information obtained in portions of the hearing designated confidential and non-public. They were treated confidentially at hearing and are a part of this motion because they discuss the information contained in FES-5-05. For these reasons, as more specifically laid out below, the information redacted from the public version of Ormet's Post-Hearing Reply Brief should be subject to a protective order by the Commission. Ormet therefore requests that the Commission enter such an order to ensure that this information remains confidential and protected and not subject to public disclosure.

Section 4901-1-24(D) of the Commission's rules provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Ohio Admin. Code § 4901-1-24(D) (2012). As set forth herein, the information described above has been represented as confidential and sensitive business information by AEP Ohio and has been provided to Ormet subject to a protective agreement. Therefore, Ormet requests that this information be protected from disclosure. The Commission regularly grants such protective orders. See, e.g., *Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, Sept. 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, Aug. 17, 1990).

While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the “public records” statute must also be read *in pari materia* with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, Feb. 17, 1982). Section 1333.61(D) identifies the definition of a trade secret as set forth in the Uniform Trade Secrets Act:

“Trade Secret” means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Ohio Rev. Code Ann. § 1331.61(D) (West 2012). The Commission facilitates the protection of such trade secrets in its rules in the Administrative Code as well. *See* Ohio Admin. Code § 4901-124(A)(7) (2012). AEP Ohio, in providing the information for which Ormet is requesting a protective order, has asserted that their projections of fuel cost changes, and discussion of them, constitute trade secrets.

In *The Plain Dealer v. Ohio Department of Insurance*, the Ohio Supreme Court adopted a six factor test to analyze whether information is a trade secret under Revised Code section 1331:

(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

80 Ohio St. 3d 513, 524-25 (1997).

Applying these factors to the portions of Ormet's Post-Hearing Reply Brief for which Ormet seeks confidential treatment indicates that a protective order should be granted. Refraining from stating its opinion on the matter, Ormet acknowledges that AEP Ohio could argue for protection of the Fuel Adjustment Clause ("FAC") as follows: the FAC projections are not known outside the business; they are known inside AEP Ohio only to a limited extent; AEP Ohio has consistently sought its treatment as a trade secret; AEP Ohio's competitors could use that information to their competitive advantage; the information and forecasting and negotiation efforts that underlie were expensive for AEP Ohio to develop; and others would face comparable cost to develop it on their own, if that were even possible. *Id.* For these reasons, the *Plain Dealer* factors could arguably favor treating the confidential portions of Ormet's Post-Hearing Reply Brief as Trade Secrets. *Id.* AEP Ohio's representations to that effect is why the Hearing Examiners were justified in moving the hearing into closed session when these topics came up, and that is why Ormet has redacted the portions of its Post-Hearing Reply Brief that draw on the confidential hearing transcripts discussing these issues.

Accordingly, by this motion and memorandum in support Ormet upholds its agreement with AEP Ohio and treat the information AEP Ohio has designated as confidential as such in the Post-Hearing Reply Brief and ensure that it is filed under seal pursuant to a confidentiality order by the Commission.

Respectfully submitted,

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Dated: July 9, 2012

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Protective Order of The Confidential Version of Ormet Primary Aluminum Corporation's Post-Hearing Reply Brief was served this 9th day of July, 2012, via the PUCO electronic filing system and by U.S. mail and e-mail, on the parties listed below.

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Summary: Motion Motion for Protective Order of Ormet Reply Brief electronically filed by Ms. Emma F Hand on behalf of Ormet Primary Aluminum Corporation